

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-1345

**DATE OF
INTRODUCTION: 5/22/00**

SPONSOR: Senator C. Louis Bassano

**DATE OF
RECOMMENDATION: 8/11/00**

IDENTICAL BILL: NONE

COMMITTEE: Senate Economic Growth, Agriculture and Tourism

DESCRIPTION:

This bill imposes a sales tax surcharge on sales of electricity that violate maximum allowable air pollution levels established by the Department of Environmental Protection in consultation with the Board of Public Utilities.

ANALYSIS:

Although the bill appears to impose the additional 3% tax on the sale of electricity generated either in-state or out-of-state and sold to a customer in New Jersey, nonetheless it is clear that the focus of the surcharge is on electricity generated in other states which may have less strict air pollution standards. Since it must be assumed that all electricity generated in New Jersey meets New Jersey's air pollution standards, the bill would be challenged on the ground that it results in an unconstitutional interference with interstate commerce by discriminating against the purchase of out-of-state electricity. Under the bill, it is much more likely that a customer will be required to pay 9% tax if electricity is purchased from an out-of-state generator, rather than an in-state company which is already subject to New Jersey's environmental standards. It is also questionable whether the tax law should be used to increase the price of electricity for New Jersey customers who choose an out-of-state supplier as this is contrary to the purpose of other laws mandating energy deregulation and consumer choice.

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RECOMMENDATION:

The Sales and Use Tax Commission does not recommend this bill for enactment.

COMMISSION MEMBERS FOR PROPOSAL: 0

COMMISSION MEMBERS AGAINST PROPOSAL: 6

COMMISSION MEMBERS ABSTAINING: 0

DATE OF MEETING: 7/26/00